IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 2959 OF 2001 (M/S)
Old CMWP No. 31627 of 1994

1. State of U.P. through the Collector Dehradun
… **Petitioners.**

Versus

1. District Judge, Dehradun
2. Dr. Muzeeb Abdul Rahaman, S/O late Khan Bahadur, Dr. Sheikh Abdul Rahaman.
3. Smt. Sarvat Ara Begum Rahaman D/O late Khan Bahadur, Dr. Sheikh A. Rahaman, R/O 7, Nemi Road, Dehradun.

…. **Respondents.**

Dated 2-03-2006

Hon'ble B.S. Verma, J.

By means of the present Writ Petition, the petitioners-State has challenged the judgment and order dated 17-9-1993 passed by the District Judge, Dehradun (respondent no. 1) in Urban Land Ceiling Appeal No. 157 of 1993, Dr. Mujeeb Abdur Rahman and another vs. Competent Authority. By the impugned judgment and order ***(Annexure-2 to the writ petition),*** respondent no.1 allowed the appeal and permitted the landholders-appellants to transfer 3443.41 sq.mt. of land subject to the provisions of Ceiling Law.

Brief facts giving rise to the present writ petition are that respondent nos. 2 and 3 are owners of property, which belonged to their mother, who died on 12.6.1993. She had executed a Will on 18th April, 1991 bequeathing the said property in favour of the respondent nos. 2 and 3. Out of the total area, land worth 2867.89 sq.mt. was declared as excess vacant land vide order dated 23.2.1982. An appeal was preferred (U.L. Ceiling Appeal No. 96 of 1982) before the District Judge, which was partly allowed the appeal vide order dated 8-5-1985 holding that the landholders were holding only 1867.89 sq.mt. excess vacant land.

A Writ Petition No. 11740 of 1984 before the Allahabad High Court and on 13.8.85 an order to the "Issue Notice. Meanwhile operation of the order dt. 8.5.85 passed by District Judge, Dehradun shall remain stayed" was passed. Subsequently, the respondent nos. 2 and 3 moved an application under Section 27(i) of the Act before the Competent Authority seeking permission to transfer an area of 3443.41 sq.mt. of land. The competent Authority rejected the applications of respondent nos. 2 and 3 vide judgment and order dated 12.8.1983. Aggrieved by the said order, an appeal was preferred before the District Judge Dehradun, who ultimately allowed the appeal permitting the respondents to transfer an area of 3443.41 sq.mt. land by his order dated 17.9.1993 which gave rise to this writ petition.

I have heard learned Standing Counsel for the State and perused the record.

The Act Urban Land (Ceiling and Regulation) Act, 1976 (Act No. 33 of 1976) was repealed by the Central Act No. 15 of 1999. The Legislature of State of U.P. has since adopted the provisions of the Urban Land (Ceiling and Regulation) Act 1999, by a resolution as required by Article 252(2) of the Constitution, which has come into force in Uttar Pradesh on 18-03-1999 and the same are also applicable in the State of Uttaranchal.

Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999 provides as under:

> **"4**. ***Abatement of legal proceedings.-All proceedings relation to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act, before any Court, Tribunal or other authority shall abate;***
>
> ***Provided that this section shall not apply to the proceedings relating to Sections 11, 12, 13 and 14 of the principal Act in so far as such proceedings are relatable to the land possession of which has been taken over by the State Government or any***

person duly authorized by the State Government in this behalf or by the competent authority."

As stated by the learned Standing Counsel, Sri Nand Prasad, appearing on behalf of the State, no declaration has been published under Section 10(3) of the principal Act, therefore, no question of vesting of the land in the State or taking over possession arises. The effect of the repealing Act on present case is that where for land in dispute, no declaration was published under Section 10(3) of the Act, there is no question of vesting the land in the State or taking over possession of it. The present proceedings have to be abated and are hereby abated under Section 4 of the Urban Land (Ceiling and Regulation) Repeal Act, 1999.

The facts of the case are squarely covered by the judgment of the Apex Court in the case of ***"Pt. Madan Swaroop Shrotiya Public Charitable Trust Vs. State of U.P. and others" (2000, AIR, SCW, 1882).***

In view of the above, the Writ Petition has become infructuous and is dismissed as infructuous. Ordered accordingly.

(B.S.Verma, J.)

RCP